IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 281 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

NILKANTH KHANDSARI UDYOG

Versus

GOVT OF GUJARAT

Appearance:

MR. D.S. NANAVATI WITH MR. S.A. MEHTA, ADVOCATE, for Petitioners

MS. P.S. PARMAR, ASST. GOVERNMENT PLEADER for respondent No. 1

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 14/10/96

ORAL JUDGEMENT

The order of the Revenue Secretary (Appeals) passed on 23.7.1985, exercising the powers of review under Section 211 of the Bombay Land Revenue Code, setting aside the order regarding N.A. permission and permission granting the licence, passed by the District

Development Officer, is under challenge in this petition.

2. The petitioners No. 1 is a partnership firm which came to be formed on 21.7.1980. The firm wanted to establish a small scale industrial unit for the purpose of manufacturing khandsari. It therefore purchased the land bearing Survey No. 681/4 admeasuring 7 acres 21 gunthas situated within the sim of village Upleta from Lakhman Govind and got three sale deeds executed. After purchasing the land the petitioners applied for necessary registration and licence; and also for N.A. permission qua part of the land admeasuring 3 acres 5 gunthas, as rest of the land of the field was to be maintained as agricultural land. On 21.8.1980 the petitioners applied for N.A. permission. The application was given to the District Development Officer of Rajkot District. On 24.11.1980 the District Development Officer was pleased to grant the permission. Meanwhile in anticipation of the permission the petitioners had started construction on the land and therefore while granting the permission, for regularisation of the construction made the District Development Officer exercised his powers and imposed a fine of Rs.. 379.80ps under Section 66 of the Bombay Land Revenue Code. The payment of fine was made as the construction was regularised on 30.4.1981. Lay out plans were also approved by the District Development Officer. Immediately after the construction of the industrial unit in the year 1981, the manufacturing process commenced. The petitioners had invested nearly about Rs. 18,00,000/-, and had employed about 250 to 300 persons. The salary of those employees came to Rs. 5,00,000/-. The petitioners also got cash subsidy of Rs. 3,90,000/equivalent to 15 percent of the capital invested. The factory was then being run smoothly; but suddenly on 30.3.1983 the petitioners received a notice from the Revenue Secretary (Appeals) respondent No. 3 calling upon the petitioners to show cause why the licence issued and permission granted earlier should not be cancelled as the District Development Officer had acted against the policy adopted by the State Government. According to the respondent No. 3, Central Government on 16.7.1966 adopted a policy that in the areas where the co-operative sectors are already having likewise units, licence should not be granted for those areas. That policy came to be adopted by the State Government on 11th July 1977. As the licence and permission granted by the District Development Officer were not consistent with the policy adopted, he preferred to review the decision already taken by the District Development Officer under Section 211 of the Bombay Revenue Code. After being served with the notice on 27.4.1983 the petitioners

appeared before the Revenue Secretary (Appeals) and put forward their case. Considering the materials before him, the Revenue Secretary on 23.7.1985 passed the impugned order whereby he cancelled the permission and licence granted by the District Development Officer. He was also of the opinion that instead of the fine of Rs. 379.80 ps., Rs. 15,192/- ought to have been imposed as fine. Whether the construction of the factory was made leaving 75 mtr. of land open from the road, was also not made clear getting the opinion of the Executive Engineer. The Revenue Secretary therefore set aside the permission and licence granted by the District Development Officer. The petitioner, being aggrieved, has preferred this petition challenging the validity and legality of the impugned order in question.

3. According to the petitioner, the Revenue Secretary who wanted to review the order under Section 211 of the Bombay Land Revenue Code ought to have taken action within a reasonable time, but when he preferred to take action after about four years, it cannot be allowed to be maintained. If the order is maintained, the petitioners would suffer heavy loss as they have invested huge amounts as stated hereinbefore, and larger good would be jeopardised.

4 On behalf of the Government, it was submitted that when no time was prescribed to review the order under section 211 of the Bombay Land Revenue Code, it was open to the Secretary to review the order whenever deemed fit. In the case on hand four years' period may be considered reasonable. Further the Secretary rightly reviewed the order and set aside the permission and licence as granted by the District Development Officer because the same were illegal being inconsistent with the policy adopted by the State Government. What is inherently illegal would not take the shape of legality by mere passage of time and so there is no wrong if illegal order is reviewed at any time.

5. For the welfare of the subject, or particular section of the society, or for boosting certain industries or commerce, or development of certain areas or region, it is open to the Government to adopt a particular or distinct policy, of course consistent with the constitution and laws in force with certain special benefits or concessions keeping others out of its purview; but actions taken or orders passed which are otherwise quite legal, cannot be upset or uprooted or held bad simply because the same are not congruous with the policy unless of course the policy has been given a

shape of the provision of any statute or law. Simple policy cannot override the act/order lawfully done. The act/order of the authority otherwise legal, but not consistent with the policy adopted has to be checked or struck down at the breeding stage or initial stage taking prompt action; but not after it is firmly rooted.

6. True the State Government from 11.7.1977 has adopted the policy, not to grant a licence to any one desiring to start sugar factory in the area where co-operative sector is having the same factory so as to see that the factory on co-operative basis may thrive, after the Union Government adopted pioneering policy on 16.7.1966; but the act of granting licence to the petitioner, in the area wherein co-operative sector is having likewise manufacturing unit, cannot be held illegal because the policy adopted to boost co-opeartive sector has not been embodied in law. The order passed is otherwise legal and was within the comptetence of the D.D.O. Rajkot. The policy therefore cannot override the lawful order granting licence. The contention advanced on behalf of the respondent State that the order of the D.D.O. granting licence to the peittioner was illegal being contrary to the policy of the Government, therefore, gains no ground to stand upon.

7. Next question that arises for consideration is within what time the authority vested with the power under Section 211 of the Bombay Land Revenue Code can review the legality and propriety of the order passed by his subordinate Officer? For that purpose, no period is fixed and therefore, ordinarily it would be open to the concerned party to say that such review can be made at any time; but the other party cannot be kept on tenterhook for unduly long time. A similar question arose before this court in the case of BHAGWANJI BAWANJI VS. STATE 12 G.L.R. 156 wherein it is laid down that although no period of time is prescribed under Section 211 of the Bombay Land Revenue Code, the power of revision must be exercised in reasonable time, and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised. Discussing further it has been laid down that if the decision is to be challenged filing the suit, under Article 14 of the First schedule of the Indian Limitation Act, for the suit the period of one year is provided. When the Legislature thought it fit to provide one year's time for challenging the act, filing the suit, there is no reason why the State Government should also not do so, if it were so affected by any such order such as the order of the Commissioner in the case by revising

the same under section 211 of the Bombay Land Revenue Code. In that decision at last it is held that maximum period it may be able to claim, cannot be more than a year from the date of the Commissioner's order, and to say that it can do so after any length of time cannot be said to be a reasonable time. In view of this decision, if the authority decides to review the order passed by the subordinate revenue officer, the same should be done within a period of one year, and not at any time as per his sweet will, and if that is not done the order passed exercising the revisional power has to be quashed and set aside. In this case, the factory i.e manufacturing work started in 1981, while the Secretary (Revenue Appeals) issued notice on 30.3.1983 and passed impugned order on 23.7.1985. It follows that within the period of one year review is not made. By the time the impugned order exercising powers under Section 211 of the B.L.R. Code came to be passed, manufacturing works had already completed four years. Crossing the infancy the unit came to be settled and firmly established throwing deep roots into the soil. At the initial stage or breeding stage when the action is not taken, the impugned order is liable to be quashed. In other words with full knowledge or with sufficient notice Government remained inactive or abstained from impeaching the orders of D.D.O. amounting to recognition or acquiescence, the acts of D.D.O. may originally be impeachable, became unimpeachable by passage of more than reasonable time.

8. At this stage my attention is drawn to the decision of the apex court rendered in the case of DELHI SCIENCE FORUM & OTHERS VS. UNION OF INDIA AND ANOTHER (1996) 2 SCC 405 for justifying that revisional power can be exercised within a reasonable time. This decision cannot be pressed into the service of the respondent as it does not answer the point that has been raised. In that case the policy of the privatisation adopted by telecom department was called in question, contending that it was not within the competence of Government to have such policy. It is held that the policy was placed before Parliament and it was for the Parliament to decide whether the policy should have been adopted. The Court refused to give any direction observing that as and when issue is raised the court can certainly examine the legality or constitutional validity of the policy. In this case whether the policy adopted is legal or constitutional is not the point at issue, and therefore the decision cited is inapplicable.

9. The petitioners have been granted N.A. permission to construct factory building as per plans

sanctioned. In anticipation of the permission, the petitioners when started to construct, the same has been regularised by imposing a fine of Rs. 379.80 ps. For establishing and running the factory and carrying on the manufacturing works necessary licences and permissions are issued by different concerned Government Departments under different laws. The petitioners then invested more than Rs. 18,00,000/- and also got benefit of Rs. 3,90,000/from the Government. The petitioners employed about 250 to 300 employees to whom salary and allowances to the tune of Rs. 5,00,000/- are being paid. The contracts to sell the products are entered into through different agencies. The Government also granted certain incentives. Mr. Nanavati the learned Advocate for the petitioner has therefore contended that the Government was estopped from cancelling the licence as the principle of promissory estoppel comes into operation.

10. As required by law the petitioners have set up the case of promissory estoppel in the pleading stating above mentioned facts. If one party by his words or conduct makes representation or assurance or promise in regard to something to be done in future, with an intention or knowledge that thereby legal relationship will arise in future, the same would be acted upon by the other party to whom the promise is made or assurance is given, and the other side being impelled to act in faith acts thereupon, the promise or assurance or representation made would be binding on the party making the same, and he cannot renege on the same. In the case on hand as stated hereinabove necessary permissions and licences are granted, plans are sanctioned, imposing fine irregularities are regularised, manufacturing work commenced, staff is employed, contracts are entered into several benefits inclusive of subsidy are made available to the petitioners, huge amounts are invested, and thus Government allowed the petitioners to have their roots firm. The principle of promissory estoppel is therefore attracted against the impugned order revoking the orders passed by the D.D.O. Rajkot.

11. For the aforesaid reasons, it is clear that the revisional powers are not exercised within a period of one year, but long after the period of four years; and therefore the order passed by the Revenue Secretary (Appeals) has to be quashed and set aside. In the result the petition is allowed. The order passed by the Secretary on 23.7.1985 a copy of which is at annexure-G is hereby quashed and set aside and the orders passed by the D.D.O. Rajkot on 24.11.80 and 30.4.81 are restored. No order as to costs in the circumstances of the case.

Rule is made absolute to the aforesaid extent.

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